

## **Part III**

### **Federal Deposit Insurance Corporation**

#### **A. Executive Summary**

The FDIC was created by Congress to insure the deposits of, and maintain stability and public confidence in, the nation's banking system. In its unique role as deposit insurer of banks and savings associations as well as the primary federal regulator for state-chartered nonmember banks and thrifts, the FDIC promotes the safety and soundness of insured depository institutions and the United States financial system. The Corporation's primary mission is to provide protection for the nation's depositors and to otherwise minimize disruptive effects from the failure of banks and savings associations. This report is submitted pursuant to section 402 of the Credit Union Membership Access Act,<sup>1</sup> which requires the federal banking agencies to submit a report to Congress "detailing their progress in carrying out section 303(a) of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI)<sup>2</sup> since their submission of the report dated September 23, 1996, as required by section 303(a)(4) of that Act [the 1996 Report]."<sup>3</sup> CDRI required the FDIC to review its regulations and written policies in an effort to streamline and modify those regulations and policies to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability; remove inconsistencies and outmoded and duplicative requirements; and work jointly with the other Federal banking agencies to make uniform all regulations and guidelines implementing common statutory or supervisory policies.<sup>4</sup> CDRI required these reviews to be "consistent with the principles of safety and soundness, statutory law and policy, and the public interest."

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<sup>1</sup> 105 Pub. L. 219, 112 Stat. 913 (Aug. 7, 1998) (12 U.S.C. § 4803, note).

<sup>2</sup> 103 Pub. L. 325, 108 Stat. 2160 (Sept. 23, 1994) (codified at 12 U.S.C. § 4803)

<sup>3</sup> *Joint Report: Streamlining of Regulatory Requirements*, September 23, 1996.

<sup>4</sup> With respect to regulations prescribed pursuant to section 18(o) of the Federal Deposit Insurance Act, 12 U.S.C. § 1828(o), CDRI required the FDIC to consider the impact that such standards have on the availability of credit for small business, residential, and agricultural purposes, and on low- and moderate-income communities. Effective September 30, 1996, section 303(a) was amended to add to the review the extent to which existing regulations require insured depository institutions to produce unnecessary internal written policies and eliminate such policies where appropriate. Pub. L. 104-208, 110 Stat. 3009 (Sept. 30, 1996) (codified at 12 U.S.C. § 4803(a)(2)).

The FDIC is pleased to report the successful implementation of the goals of CDRI. At the time of the 1996 Report, the FDIC had completed the review of all of its regulations and policies as required by section 303(a) of CDRI, formulated recommendations with respect to each and begun implementing the recommendations. Today, implementation of the FDIC's CDRI review recommendations is virtually complete. Table 1 summarizes the actions the FDIC has taken with regard to the FDIC-specific regulations and policies reviewed pursuant to CDRI section 303(a). Of the 63 regulations and policies reviewed under CDRI, 23 have been revised, 19 have been rescinded and 17 have been retained as written because they were determined to be consistent with CDRI goals. Column 1 of Table 1 summarizes the actions taken by the FDIC as of the date of the 1996 Report to implement the recommendations of the CDRI review. At that time, 4 rules and policies had been revised, 9 had been rescinded and 17 had been retained. Column 2 of Table 1 summarizes the agency's actions to date to implement the remaining 33 recommendations. Nineteen regulations and policies have been revised since the 1996 Report and 10 have been rescinded. The FDIC is continuing to implement CDRI goals in four ongoing projects<sup>5</sup> discussed at the end of this section.

**Table 1**  
**Summary of Actions Taken to Implement**  
**CDRI Section 303 Projects**

	As of 1996 Report	Since 1996 Report	Total
Revised regulations and policies	4	19	23
Rescinded regulations and policies	9	10	19
Retained regulations and policies	17	0	17
Ongoing Projects	0	4	4
Total	30	33	63

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<sup>5</sup> Advertisement of Membership, Minority and Women Outreach Program – Contracting, National Historic Preservation Act of 1966, and Notification of Changes of Insured Status.

## **B. Significant Accomplishments**

### **Activities of Insured State-Chartered Institutions**

#### 12 CFR Part 362

The FDIC revised the agency's regulations governing the activities and investments of insured state banks and savings associations and consolidated these previously widely dispersed regulations into a single part of the FDIC's rules and regulations, Part 362. While the revised rule does not grant new powers to insured state depository institutions, it provides the framework for which certain state-chartered banks or their majority-owned subsidiaries may engage in activities that are not permissible for national banks or their subsidiaries. The regulation is structured using a "menu approach" with various requirements imposed on certain activities. The regulation addresses three broad areas:

- Eligibility requirements, including requirements for the depository institution and for the subsidiary. The rule's notice procedure expedites the processing of requests from banks meeting various eligibility requirements.
- Investment and transaction restrictions incorporating standards similar to those prescribed by sections 23A and 23B of the Federal Reserve Act.
- Capital standards requiring insured depository institutions to be well-capitalized after deducting their equity investments in a subsidiary from regulatory capital.

### **Fair Housing and Reporting and Recordkeeping Requirements**

#### 12 CFR Part 338

In July 1997, the FDIC amended its fair housing regulation, 12 CFR Part 338 [62 FR 36201 (1997)], which implements section 805 of Title VIII of the Civil Rights Act of 1968.<sup>6</sup> The final rule reduces burden associated with maintaining, updating, and reporting a register of home loan applications by requiring insured state non-member banks to comply only with the Federal Reserve Board's (FRB) Regulation C, which implements the Home Mortgage Disclosure Act,<sup>7</sup> and Regulation B,

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<sup>6</sup> Pub. L. 100-430, 102 Stat. 1619 (Sept. 13, 1988) (codified at 42 U.S.C. § 3601 *et seq.*).

<sup>7</sup> Pub. L. 94-200, title III, 89 Stat. 1125) (Dec. 31, 1975) (12 U.S.C. § 2801 *et seq.*)

which implements the Equal Credit Opportunity Act<sup>8</sup>. The final rule simply cross-references Regulations B and C. These actions were taken in accordance with CDRI section 303(a) and align the FDIC's regulation with those of other Federal bank and thrift regulatory agencies.

## **Filing Procedures and Delegations of Authority**

### 12 CFR Part 303

Part 303 of the FDIC Rules and Regulations describes the procedures to be followed by both the FDIC and the banking industry with respect to applications, notices, or requests required to be filed with FDIC by statute or regulation. Part 303 also sets forth delegations of authority from the FDIC Board of Directors to designated staff members. As a result of the CDRI review, Part 303 was completely reorganized for ease of reference, with duplicative and outdated material removed from numerous rules and statements of policy. The comprehensive changes made to Part 303 in August 1998 [63 FR 44686 (1998)] reduce regulatory burden and fulfill the goals of the CDRI in several other significant ways.

- New expedited processing procedures were introduced for most applications submitted by well-managed, well-capitalized banks. In addition, some applications are now treated like notices, whereby the application is automatically deemed approved after a prescribed timeframe unless the institution is notified otherwise by the FDIC. These streamlined procedures reduce processing time for applications overall, add more certainty to the timing of regulatory actions, and allow the FDIC to focus its resources on applications that are more likely to present safety and soundness risks or raise CRA or compliance concerns.
- The procedural requirements for virtually all applications and notices were centralized in Part 303. Previously, application requirements were scattered among several parts of the FDIC's regulations. This centralization makes it much easier for institutions to determine quickly which application and notice requirements apply to them, especially community banks which frequently prepare their own applications rather than employ outside counsel.

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<sup>8</sup> Pub. L. 93-495, Title V, 88 Stat. 1521 (Oct. 28, 1974) (codified at 15 U.S.C. § 1691 *et seq.*)

- Delegations of authority from the FDIC's Board of Directors to staff were reviewed and, in some cases, expanded and clarified to promote more efficient action.

## **Simplification of the Deposit Insurance Regulations**

### **12 CFR Part 330**

In May 1998, the FDIC simplified its deposit insurance regulations by restating the regulations in plainer language and by adding examples [63 FR 25750 (1998)]. The effective date was July 1, 1998. Subsequently, in March of 1999, the FDIC completed its simplification efforts by amending the rules governing the coverage of joint accounts and revocable trust (or "payable-on-death") accounts. In the case of joint accounts, the FDIC reduced a complicated two-step process to one step. Each person's interests in all joint accounts at the same depository institution now shall be added together and insured up to \$100,000. In the case of revocable trust accounts, the FDIC expanded the list of "qualifying beneficiaries" by adding parents and siblings to the list of spouse, children and grandchildren. The amendments dealing with joint accounts and revocable trust accounts became effective on April 1, 1999 [64 FR 15653 (1999)]. As a result of the FDIC's simplification efforts, the number of depositors who exceed the \$100,000 insurance limit unknowingly should be greatly reduced.

## **C. Summary Status Reports: Progress Implementing CDRI Reviews Since the 1996 Report**

The following is a summary of the 33 regulations and policy statements for which the FDIC has implemented its CDRI-related recommendations since the 1996 Report.

## Revised by the FDIC Since the 1996 Report

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**Title: Activities and Investments of Insured State Banks<sup>9</sup>**  
(12 CFR Part 362)

See discussion in Section B.

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**Title: Applications for Deposit Insurance**  
(FDIC Loose Leaf at p. 5349)<sup>10</sup>

**Subject Matter:** Provides application instructions and guidance to prospective applicants for federal deposit insurance, to alert applicants to certain minimum requirements and standards, and to inform applicants of the issues with respect to deposit insurance applications that are of concern to the FDIC.

**Action/Status:** The policy statement was revised concurrently with the FDIC's comprehensive reorganization of its applications procedures, *see* 12 CFR Part 303 (*Filing Procedures and Delegations of Authority*). Revisions reflect current policies and practices that previously had not been incorporated into the policy statement, including policies regarding initial capitalization requirements and stock benefit plans. Other changes include guidance for proposed institutions to be owned by domestic governmental units as well as additional delegated authority for regional directors.

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**Title: Applications to Establish a Domestic Branch (Includes Remote Service Facilities)**  
(FDIC Loose Leaf at p. 5105)

**Subject Matter:** Describes the procedures for applying to the FDIC to establish a branch office or establish a remote service facility. The policy statement also details the statutory factors which the FDIC must consider in processing the application.

**Action/Status:** The FDIC moved the substance of this statement of policy to the FDIC's applications regulation during the FDIC's comprehensive reorganization of its applications process, *see* 12 CFR Part 303 (*Filing Procedures and Delegations of Authority*). This policy statement was then rescinded concurrently with the publication of the revised Part 303 [63 FR 44766 (1998)].

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<sup>9</sup> Now known as "Activities of Insured State Banks and Insured Savings Associations." *See* 63 FR 66275-66346 (1998).

<sup>10</sup> Citations to "FDIC Loose Leaf" refer to specific pages in *Federal Deposit Insurance Corporation Law, Regulations and Related Acts*.

## Revised by the FDIC Since the 1996 Report

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**Title: Applications Under Section 19 of the Federal Deposit Insurance Act**<sup>11</sup>  
(FDIC Loose Leaf at p. 5155)

**Subject Matter:** Section 19 of the Federal Deposit Insurance Act<sup>12</sup> (FDI Act) provides that "except with the written consent of the Corporation" no person who has been convicted of an offense involving dishonesty or a breach of trust may serve as an officer, director, or employee of an insured bank. The policy statement establishes standards to be used in determining when an application pursuant to section 19 must be filed, explains procedures to be followed in filing and processing the applications and discusses factors to be considered in evaluating the applications.

**Action/Status:** Section 19 was significantly expanded by the Financial Institutions Reform, Recovery and Enforcement Act of 1989<sup>13</sup> (FIRREA), and the Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990<sup>14</sup> (Crime Control Act). As a result, two existing policy statements that implemented section 19 were replaced with a new policy statement that supersedes prior guidelines. *See also* "Consent to Service of Persons Convicted of Offenses Involving Dishonesty or A Breach of Trust As Directors, Officers or Employees of Insured Banks,"<sup>15</sup> which was rescinded. The new statement of policy generally retains the FDIC's current filing requirements under section 19 and clarifies their scope. It also reduces unnecessary burden by providing for blanket approvals, filing waivers, and exclusions in certain instances where they are warranted [63 FR 66177 (1998)].

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**Title: Assessments**  
(12 CFR Part 327)

**Subject Matter:** This regulation establishes procedures for calculating and paying semiannual deposit insurance assessments.

**Action/Status:** The FDIC revised the assessment regulation to clarify assessment procedures with respect to transactions in which an institution belonging to one insurance fund acquires deposits that are treated as insured by the other insurance fund through an "Oakar" transaction. The revision also codified and refined procedures for determining the Adjusted Attributable Deposit Amount (AADA), which is used to allocate an Oakar institution's assessable deposits between the Bank Insurance Fund (BIF) and the Savings Association Insurance Fund (SAIF). The regulation also eliminated the requirement that Oakar institutions submit periodic growth worksheets to adjust their AADAs for normal growth or shrinkage. The FDIC now calculates AADAs itself and supplies them to institutions in the materials accompanying the institutions' quarterly assessment invoices. Finally, the revision simplified and clarified the existing rule by making nomenclature changes [61 FR 64960 (1996)].

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<sup>11</sup> Now known as "FDIC Statement of Policy for Section 19 of the FDI Act." *See* 63 FR 66177-66185 (1998).

<sup>12</sup> 12 U.S.C. § 1829.

<sup>13</sup> Pub. L. No. 101-73, 103 Stat. 183 (1989).

<sup>14</sup> Pub. L. No. 101-647, 104 Stat. 4789 (1990).

<sup>15</sup> FDIC Loose Leaf at 5041.

## Revised by the FDIC Since the 1996 Report

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**Title: Deposit Insurance Coverage**  
(12 CFR Part 330)

See discussion in Section B.

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**Title: Determination of Economically Depressed Regions**  
(12 CFR Part 357)

**Subject Matter:** Section 13(k)(5) of the FDI Act<sup>16</sup> provides that the FDIC shall consider proposals for financial assistance under FDI Act section 13(c)<sup>17</sup> for eligible SAIF members located in "economically depressed regions" prior to the appointment of a conservator or receiver. The FDIC promulgated Part 357 in 1990, listing eight states that the FDIC determined to be economically depressed under the statute.

**Action/Status:** In order to account for changing economic conditions and to provide guidance to applicants to evaluate their situations before formally applying for assistance, the FDIC revised the rule to provide the criteria the FDIC will use to determine which regions are economically depressed, rather than list the states that are currently economically depressed. The revision also requires the case-by-case definition of the geographic unit that comprises an economically depressed region for an institution. This change will allow for situations where an institution is limited to some portion of a state or crosses two or more state boundaries.

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**Title: Development and Review of FDIC Rules and Regulations**  
(FDIC Loose Leaf Service at p. 5057)

**Subject Matter:** This policy describes FDIC's continuing commitment to improving the quality of its regulations and policies, to minimize regulatory burdens, and generally to ensure that its regulations and policies achieve legislative goals effectively.

**Action/Status:** FDIC revised its policy to focus more sharply on the basic principles that underlie its approach to regulation. Provisions of the policy that established internal procedures or merely restated the law were deleted and the scope of the policy was expanded to include written statements of policy adopted by the Board of Directors. The new title of the policy is "Development and Review of FDIC Regulations and Policies" [63 FR 25157 (1998)].

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<sup>16</sup> 12 U.S.C. § 1823(k)(5).

<sup>17</sup> 12 U.S.C. § 1823(c).

## Revised by the FDIC Since the 1996 Report

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**Title: FDIC Statement of Policy on Bank Merger Transactions**  
(FDIC Loose Leaf p. 5145)

**Subject Matter:** Describes the procedures for applications by insured institutions to merge, consolidate with, or purchase another insured institution if the resulting institution is to be a state nonmember bank. Also covers applications for such transactions between insured and non-insured institutions.

**Action/Status:** The FDIC revised this statement of policy in conjunction with its revision of merger application procedures, *see* 12 CFR Part 303 (*Filing Procedures and Delegations of Authority*). The statement of policy was updated to reflect statutory changes and other developments since its last revision in 1989, including changes made by the CDRI Act; the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994<sup>18</sup>; and FIRREA. In addition, numerous clarifications and refinements were adopted, including the addition of new provisions intended to give guidance in areas not addressed by the existing statement of policy. Guidance was expanded to include optional conversion transactions (commonly referred to as Oakar transactions) under 12 U.S.C. 1815(d)(3), branch closings in connection with merger transactions, and interstate and interim merger transactions.

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**Title: FDIC Statement of Policy Regarding the Payment of State and Local Property Taxes**  
(FDIC Loose Leaf Service p. 5331)

**Subject Matter:** Section 15 of the Federal Deposit Insurance Act<sup>19</sup> provides immunity to the FDIC, both in its corporate capacity and when it is acting as a receiver, from all taxation imposed by any state, county, municipal, or local taxing authority, except for ad valorem real property taxation. The policy provides guidance concerning the FDIC's payment of state and local property taxes when it is liquidating assets in its corporate or receivership capacity.

**Action/Status:** The policy statement was reissued with certain minor revisions to reflect practical experience and the development of judicial interpretation involving the statute, and to address assets the FDIC acquired as successor to the Resolution Trust Corporation (RTC). The single new policy statement replaces the two separate policy statements issued previously by the RTC and the FDIC [61 FR 65053 (1996)].

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**Title: Filing Procedures and Delegations of Authority**  
(12 CFR Part 303)

See discussion in Section B.

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<sup>18</sup> Pub. L. 103-328, 108 Stat. 2338 (Sept. 29, 1994) (12 U.S.C. § 3104, note and § 1811, note).

<sup>19</sup> 12 U.S.C. § 1825.

## Revised by the FDIC Since the 1996 Report

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### **Title: Foreign Activities of Insured State Nonmember Banks**

(12 CFR Part 347)

**Subject Matter:** Governs foreign branching and investment by insured state nonmember banks, insured branches of foreign banks, deposit-taking by uninsured state-licensed branches of foreign banks, and international lending by insured state nonmember banks.

**Action/Status:** The FDIC updated, streamlined and consolidated three different groups of regulations governing international banking. Regulations regarding insured branches of foreign banks and deposit-taking by uninsured state-licensed branches of foreign banks, previously located in 12 CFR Part 346, are now located in subpart B of 12 CFR Part 347; Part 346 has been removed. Regulations covering the international lending operations of insured state nonmember banks, previously located in 12 CFR Part 351, are now located in subpart C of 12 CFR Part 347; Part 351 has been removed. The final rule, now entitled "International Banking," became effective July 1, 1998 [63 FR 17056 (1998)].

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### **Title: Foreign Banks**

(12 CFR Part 346)

**Subject Matter:** Implements the insurance provisions of section 6 of the International Banking Act of 1978 and covers the operations of U.S. branches of foreign banks.

**Action/Status:** In conjunction with revisions to *Foreign Activities Of Insured State Nonmember Banks* (12 CFR Part 347) and *International Operations* (12 CFR Part 351), the substance of this regulation was incorporated into the revised Part 347. Part 346 has been eliminated [63 FR 17056 (1998)].

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### **Title: Forms, Instructions, and Reports**

(12 CFR Part 304)

**Subject Matter:** This regulation fulfills the Freedom of Information Act requirement that all agencies, including the FDIC, publish ". . . rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations . . ." [5 U.S.C. § 552(a)].

**Action/Status:** The FDIC revised this regulation to streamline it while retaining the listing of forms and other required information to satisfy the public information requirements of the Freedom of Information Act,<sup>20</sup> section 122 of FDICIA,<sup>21</sup> and section 37 of the FDI Act<sup>22</sup> [62 FR 4895 (1997)].

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<sup>20</sup> Pub. L. 89-554, 80 Stat. 383 (Sept. 6, 1966) (codified at 5 U.S.C. § 552).

<sup>21</sup> Pub. L. 102-242, 105 Stat. 2236 (Dec. 19, 1991) (12 U.S.C. § 1817, note).

<sup>22</sup> Pub.L. 797, 64 Stat. 882 (Sept. 21, 1950) (12 U.S.C. § 1831n(a)-(c)).

## Revised by the FDIC Since the 1996 Report

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**Title: National Environmental Policy Act of 1969**

(FDIC Loose Leaf Service p. 5185)

**Subject Matter:** This policy sets forth procedures for the consideration of environmental factors when reviewing applications for deposit insurance, branches, mergers and relocations.

**Action/Status:** The policy statement, now known as “National Environmental Policy Act Procedures Relating to Filings Made with FDIC,” was revised effective December 14, 1998 [63 FR 63474 (1998)].

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**Title: Resolution and Receivership Rules**

(12 CFR Part 360)

**Subject Matter:** This regulation implements a number of statutory provisions regarding the FDIC's bank and thrift failure resolution and receivership activities. This includes (1) compliance with the "least-cost" test when resolving a failure, (2) Federal Home Loan banks as secured creditors, (3) priority scheme for receivership claims, and (4) administrative expenses of the receiver.

**Action/Status:** In 1998, the FDIC made technical amendments to its receivership regulations addressing least-cost resolutions and the security interests of Federal Home Loan Banks in FDIC administered receiverships. In addition, pursuant to the initial CDRI review, the FDIC proposed in 1997 to remove section 360.2 that addresses secured claims of banks in FDIC-administered receiverships. Section 360.2 was ultimately retained, however, based on unanimous public comment indicating the section provides clarity and certainty [63 FR 37760 (1998)].

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**Title: Statement of Policy on Foreclosure Consent and Redemption Rights**

(FDIC Loose Leaf Service p. 5359)

**Subject Matter:** Section 15(b)(2) of the FDI Act<sup>23</sup> provides that the property of the FDIC in its receivership capacity is not subject to levy, attachment, garnishment, foreclosure, or sale without the consent of the FDIC in its receivership capacity. The policy discusses the circumstances under which the FDIC will assert its immunity from foreclosure, and when the FDIC will consent to a foreclosure or other assertion of a security interest with respect to assets in liquidation.

**Action/Status:** The policy was revised to clarify the applicability of the FDIC policy statement regarding assets for which the FDIC has succeeded the RTC as conservator or receiver and to assets for which the FDIC, as manager of the FSLIC Resolution fund, has succeeded the RTC as owner. The policy was also updated to provide current information about the FDIC and updated lists of financial institutions in liquidation were published in the *Federal Register* [61 FR 53494 (1996)].

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<sup>23</sup> 12 U.S.C. § 1825(b)(2).

## Revised by the FDIC Since the 1996 Report

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**Title: Statement of Policy Regarding Liability of Commonly Controlled Depository Institutions**  
(FDIC Loose Leaf Service p. 5327)

**Subject Matter:** This policy was designed to provide guidance regarding the manner in which the FDIC issues an assessment or grants a waiver of liability under section 5(e) of the FDI Act.<sup>24</sup> The method for dividing any liability between surviving institutions is described, as well as the type of information which an institution should provide when applying for a waiver.

**Action/Status:** The policy statement was amended effective April 1, 1997 to offer additional guidance and clarification based on the FDIC's experience in administering the provisions of section 5(e) of the FDI Act. Additionally, the application procedures previously included in this policy statement were incorporated into the comprehensive revision to the FDIC's applications process, *see* 12 CFR Part 303 (*Filing Procedures and Delegations of Authority*).

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**Title: Unsafe and Unsound Banking Practices: Brokered Deposits**  
(12 CFR Section 337.6)

**Subject Matter:** Pursuant to FIRREA, the regulation establishes a framework for the acceptance of brokered deposits by insured depository institutions. The regulation limits the interest (1) that adequately capitalized institutions may pay on brokered deposits, and (2) that undercapitalized institutions may pay on any deposits. It also provides a notification requirement for deposit-brokers. The current FDIC regulation defines and clarifies key terms used in the statute. It also prescribes waiver application and broker notification procedures. Otherwise, the regulation largely reiterates the statutory language.

**Action/Status:** Although this regulation was listed as a "retain" in the 1996 Report, the notification requirements under this regulation were incorporated into the comprehensive revision to the FDIC's applications process, *see* 12 CFR Part 303 (*Filing Procedures and Delegations of Authority*). The FDIC has requested Congress to eliminate the provision regarding deposit broker notification and to simplify the calculation of the interest rate limit, both of which are statutory. The FDIC must retain the remaining portion of the regulation until the statute is amended.

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<sup>24</sup> 12 U.S.C. § 1815(e).

## Rescinded by the FDIC Since the 1996 Report

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**Title: Applications, Legal Fees, And Other Expenses**  
(formerly FDIC Loose Leaf Service p. 5031)

**Subject Matter:** The policy provided general guidelines regarding whether legal fees and other expenses were reasonable, and communicated that the payment of unreasonable or excessive fees reflected adversely upon the management of an institution and could have an adverse impact upon the regulatory applications filed with the FDIC.

**Action/Status:** The initial CDRI recommendation was to revise this policy statement; however, after further review the policy was rescinded because its contents were considered outmoded or duplicative of other statements of policy. Information deemed relevant was moved to the FDIC's applications regulation during the FDIC's reorganization of its applications process, *see* 12 CFR Part 303 (*Filing Procedures and Delegations of Authority*) [62 FR 15479 (1997)].

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**Title: Applications to Relocate Main Office or Branch (Includes Remote Service Facilities)**  
(formerly FDIC Loose Leaf Service p. 5125)

**Subject Matter:** This policy described procedures for filing an application to relocate a branch office or a remote service facility. The policy also described the statutory factors that the FDIC considered in processing the application.

**Action/Status:** The FDIC moved the substance of this statement of policy to the FDIC's applications regulation during the FDIC's comprehensive reorganization of its applications process, *see* 12 CFR Part 303 (*Filing Procedures and Delegations of Authority*). This policy statement was then rescinded concurrently with the publication of the revised Part 303 [63 FR 44766 (1998)].

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**Title: Changes in Control in Insured Nonmember Banks**  
(formerly FDIC Loose Leaf Service p. 5053)

**Subject Matter:** The policy implemented section 7(j) of the FDI Act,<sup>25</sup> which requires written notice of a change in control 60 days prior to the proposed acquisition. The policy statement incorporated the statutory and other regulatory requirements and described circumstances when a notice was not required.

**Action/Status:** The initial CDRI recommendation was to revise this policy statement; however, after further review the Statement of Policy was deemed duplicative and unnecessary because all substantive information that it contains is also provided in the FDIC change in bank control regulations. (12 CFR Part 303, subpart E and 12 CFR Part 308, subpart D). Therefore, the statement of policy was rescinded [62 FR 24927 (1997)].

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<sup>25</sup> 12 U.S.C. § 1817(j).

## Rescinded by the FDIC Since the 1996 Report

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**Title: Consent to Service of Persons Convicted of Offenses Involving Dishonesty or a Breach of Trust as Directors, Officers or Employees of Insured Banks**  
(formerly FDIC Loose Leaf Service p. 5041)

**Subject Matter:** This policy provided a discussion of factors to be considered in reviewing applications pursuant to section 19 of the FDI Act<sup>26</sup> to obtain consent to employ persons convicted of offenses involving dishonesty or a breach of trust as directors, officers, or employees of insured banks.

**Action/Status:** This policy has been superseded by another policy statement, *Applications under section 19 of the Federal Deposit Insurance Act*, which was revised in 1998 (see discussion above). This later policy statement is more expansive and includes, almost verbatim, the content of subject policy statement. As a result, this policy statement was deemed duplicative and unnecessary and was rescinded [63 FR 66177 (1998)].

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**Title: FDIC Statement of Policy on Assistance to Operating Insured Depository Institutions**  
(formerly FDIC Loose Leaf Service p. 5235)

**Subject Matter:** This policy set forth the basic terms and conditions under which the FDIC would provide assistance to open and operating institutions pursuant to section 13(c) of the FDI Act.<sup>27</sup>

**Action/Status:** The initial CDRI recommendation was to revise this policy statement; however, after further review the FDIC rescinded it as it was duplicative of statutory requirements in the FDI Act, was not required by the FDI Act, and was not necessary for purposes of the FDIC's consideration of assistance proposals it receives. Moreover, the FDIC does not anticipate receiving many viable assistance proposals in the future, since it is unlikely that such proposals would meet the statutory requirements [62 FR 25191 (1997)].

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<sup>26</sup> 12 U.S.C. § 1829.

<sup>27</sup> 12 U.S.C. § 1823(c).

## Rescinded by the FDIC Since the 1996 Report

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**Title: FDIC Statement of Policy on Retail Repurchase Agreements**

*(formerly FDIC Loose Leaf Service p. 5217)*

**Subject Matter:** This policy provided guidelines for the issuance of retail repurchase agreements by banks. The policy statement was adopted in an era when interest rates were legally regulated, and banks issued retail repurchase agreements to offer higher rates of return to customers who otherwise would have chosen deposit liabilities. The primary focus of the policy was to ensure that bank retail customers comprehended the nature and risks entailed in these products, and to ensure that potentially unsophisticated banks issuing them appreciated that these retail products have unusual supervisory and legal consequences.

**Action/Status:** With the rescission of interest rate controls, retail repurchase agreements are not a popular source of funding for depository institutions. The Government Securities Act of 1986<sup>28</sup> established, among other things, requirements for repurchase agreement transactions using United States government and agency securities. The FDIC has issued guidance for the sale of investment products by banks in the Interagency Statement on Retail Sales of Nondeposit Investment Products. These developments made the policy on Retail Repurchase Agreements outmoded, and prompted the FDIC to rescind it [61 FR 65225 (1996)].

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**Title: [Federal Deposit Insurance Corporation Policy Statement on] Community Reinvestment Act**

*(formerly FDIC Loose Leaf Service p. 5165)*

**Subject Matter:** This FDIC policy provided a discussion of the Community Reinvestment Act and its implementing regulations, and the impact of an institution's record upon the consideration of regulatory applications filed with the FDIC.

**Action/Status:** The FDIC rescinded this statement of policy which was rendered obsolete by the 1995 revisions to the regulation implementing the CRA [62 FR 54112 (1997)].

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**Title: Financial Disclosure Requirements for Employees of the FDIC**

*(formerly 5 CFR Part 3202)*

**Subject Matter:** This regulation established financial disclosure requirements for FDIC employees in addition to the government-wide public and confidential financial disclosure reporting requirements.

**Action/Status:** The FDIC rescinded this regulation as unnecessary based on the Office of Government Ethics determination that it has the authority to approve supplemental disclosure forms without separate agency regulations [61 FR 50947 (1996)].

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<sup>28</sup> Pub. L. 99-571, 100 Stat. 3208 (Oct. 28, 1986).

## Rescinded by the FDIC Since the 1996 Report

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**Title: Statement of Policy Regarding Independent External Auditing Programs of State Nonmember Banks**

*(formerly FDIC Loose Leaf Service p. 5302.01)*

**Subject Matter:** This policy recommended minimum procedures for annual external auditing programs of FDIC-supervised banks, especially banks that forgo an annual audit of their financial statements by an independent public accountant. The policy statement provided specific auditing procedures to address the following areas common to all banks that may prove to be high risk: loans, the allowance for loan losses, securities investments, transactions involving bank officers, directors, and other "insiders," and internal controls.

**Action/Status:** While federal law requires audits for larger institutions and many states achieve similar objectives for smaller banks through "directors' exams," this policy statement was intended for smaller banks in states which had minimal or no directors' exams. Although the initial CDRI recommendation was to revise the policy statement, it is now no longer consistent with the American Institute of Certified Public Accountants' revised standards for agreed-upon procedures. The policy was rescinded effective December 31, 1997 [63 FR 878 (1998)].

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**Title: Statement Regarding Eligibility to Make Application to Become an Insured Bank Under Section 5 of the Federal Deposit Insurance Act**

*(formerly FDIC Loose Leaf Service p. 5237)*

**Subject Matter:** This policy statement was adopted to clarify the FDIC's construction of certain amendments under the Garn-St Germain Depository Institutions Act of 1982<sup>29</sup> (Garn Act). These amendments extended eligibility for federal deposit insurance to state-chartered industrial banking companies and similar entities, and set out special factors in section 5(a) of the FDI Act<sup>30</sup> which the FDIC was required to consider in connection with granting such entities deposit insurance. The policy explained the FDIC's views of what legal status an institution must have under state law to be eligible for deposit insurance in light of the Garn Act amendments, and specified what the FDIC would look for in considering the section 5(a) factors.

**Action/Status:** The section 5(a) factors were removed by FIRREA and the discussion of them in the policy statement as statutory factors became obsolete. Accordingly, the policy statement was rescinded effective April 2, 1997 [62 FR 15706 (1997)].

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## Retained by the FDIC

The 1996 Report reviewed the regulations and policies that the FDIC had determined were consistent with CDRI goals. Since the 1996 Report the FDIC has not added any FDIC-specific regulations or policies to the "retain without revision" category.

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<sup>29</sup> Pub. L. 97-320, 96 Stat. 1469 (Oct. 15, 1982).

<sup>30</sup> 12 U.S.C. § 1815(a).

## Ongoing FDIC Projects

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**Title: Advertisement of Membership**  
(12 CFR Part 328)

**Subject Matter:** This regulation sets forth requirements regarding the advertisement by insured institutions of FDIC membership. Part 328 also sets forth mandatory requirements for banks, but not for savings associations, for inclusion of a statement covering FDIC membership in advertisements.

**Action/Status:** In February 1997, the FDIC issued a Notice of Proposed Rulemaking that would amend Part 328 [62 FR 6142 (1997)]. The proposed rule would consolidate the provisions that require insured institutions to display official signs, extend the official advertising statement that is currently required for insured banks to all insured depository institutions, streamline the exceptions to the required use of the official advertising statement, and prohibit the use of the official advertising statement in advertisements concerning nondeposit investment products or similar nondeposit products. FDIC staff is continuing to address issues presented by the notice of proposed rulemaking.

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**Title: Minority and Women Outreach Program - Contracting**  
(12 CFR Part 361)

**Subject Matter:** This regulation implements 12 U.S.C. § 1833e(c). It establishes the FDIC Minority and Women Outreach Program. It is designed to ensure inclusion, to the maximum extent possible, of minorities and women in all contracts entered into by the FDIC with public or private sector contractors.

**Action/Status:** The 1996 Report indicated that Part 361 would be retained pending FDIC review of Department of Justice guidelines pursuant to the Supreme Court decision in *Adarand Constructors v. Peña* (115 S.Ct. 2097 (1995)). FDIC anticipates publishing a notice of proposed amendment to 12 CFR Part 361 later this year to conform its rule to *Adarand*.

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## Ongoing FDIC Projects

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**Title: National Historic Preservation Act of 1966<sup>31</sup>**  
(FDIC Loose Leaf Service p. 5175)

**Subject Matter:** The policy discusses the FDIC's responsibility for determining whether the establishment of a bank or branch, or the relocation of an office, involves a property which is included in, or eligible for inclusion in, the National Register of Historic Places and describes procedures to be followed when such an undertaking involves a historic property.

**Action/Status:** The policy statement will be revised to reflect current procedures. The FDIC plans to enter into a Programmatic Agreement with the Advisory Council on Historic Preservation. The Programmatic Agreement will establish means, alternate to the Advisory Council's regulations, by which the FDIC will comply with the NHPA. Entering into the Programmatic Agreement will result in changes to our procedures for the consideration of historic preservation matters in the processing of deposit insurance and branch applications. Following adoption of the Programmatic Agreement, the policy statement will be revised to reflect the procedures established by the agreement. A revised policy statement should be presented to the Board later this year.

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**Title: Notification of Changes of Insured Status**  
(12 CFR Part 307)

**Subject Matter:** Subsection 1 of this regulation requires that a bank agreeing to assume the deposit liabilities of another institution (through merger, consolidation, etc.) make a certification about the assumption to the FDIC within 30 days after its effective date. Subsection 2 requires an insured bank which voluntarily terminates its insured status to notify all depositors of the termination in the manner provided by the FDIC Regional Director.

**Action/Status:** In furtherance of its CDRI review of Part 307, the FDIC has published a notice of proposed rulemaking, proposing revisions to the regulation and seeking public comment [62 FR 26431 (1997)]. Matters addressed in the initial notice of proposed rulemaking are being reviewed and it is anticipated that the Board of Directors will take further action on this rulemaking this year.

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<sup>31</sup> Pub. L. 89-665, 80 Stat. 915 (Oct. 15, 1966) (codified at 16 U.S.C. 470).

## **D. FDIC Projects Completed as of the 1996 Report**

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### **1. Revised**

Annual Independent Audits and Reporting Requirements (12 CFR Part 363)  
Privacy Act Regulations (12 CFR Part 310)  
Rules Governing Public Observation of Meetings of the Corporation's  
Board of Directors (12 CFR Part 311)  
Statement of Policy Providing Guidance on External Auditing Procedures For  
State Nonmember Banks (FDIC Loose Leaf Service p. 5229)

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### **2. Rescinded**

Guidelines for Implementing a Policy of Capital Forbearance  
Guidelines for Monitoring Bank Secrecy Act Compliance  
Insured State Nonmember Banks – Statement of Policy Guidelines for  
Investments in “Leeway Securities”  
Interagency Guidance on Accounting for Dispositions of Other Real Estate  
Owned  
Justice Department Policy on Bank Bribery Prosecution  
Risks and Controls in End-User Computing  
Statement of Policy Concerning Interest Rate Futures Contracts, Forward  
Contracts and Standby Contracts  
Statement of Policy on Contracting with Outside Firms  
Time Limits for Filing Reports of Condition

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### **3. Retained**

Assessment of Fees upon Entrance to or Exit from the Bank Insurance  
Fund or the Savings Association Insurance Fund (12 CFR Part 312)  
Disclosure of Information (12 CFR Part 309)  
Extension of Corporate Powers (12 CFR Part 333)  
FDIC Statement of Policy on Qualified Financial Contracts  
(FDIC Loose Leaf Service p. 5113)  
FDIC Statement of Policy on the Applicability of the Glass-Steagall  
Act to Securities Activities of Insured Nonmember Banks  
(FDIC Loose Leaf Service p. 5225)  
Gold (FDIC Loose Leaf Service p. 5035)  
Guidelines for Compliance with the Federal Bank Bribery Law  
(FDIC Loose Leaf Service p. 5289)  
NonDiscrimination on the Basis of Handicap (12 CFR Part 352)

Policy Statement on Encouragement and Preservation of  
Minority Ownership of Financial Institutions  
(FDIC Loose Leaf Service p. 5329)

Statement Concerning the Responsibilities of Bank Directors and  
Officers (FDIC Loose Leaf Service p. 5369)

Statement of Policy on Alternative Dispute Resolution  
(FDIC Loose Leaf Service p. 5395)

Statement of Policy Regarding Treatment of Collateralized  
Letters of Credit after Appointment of the  
Federal Deposit Insurance Corporation as  
Conservator or Receiver (FDIC Loose Leaf Service p. 5411)

Statement of Policy Regarding Treatment of Collateralized Put Obligations after  
Appointment of the Federal Deposit Insurance Corporation as Conservator  
or Receiver (FDIC Loose Leaf Service p. 5335)

Statement of Policy Regarding Treatment of Security Interests after Appointment  
of the Federal Deposit Insurance Corporation as Conservator or Receiver  
(FDIC Loose Leaf Service p.5377)

Supplemental Standards of Conduct for Employees of the FDIC (5 CFR Part  
3201)

Unsafe and Unsound Banking Practices: Standby Letters of Credit (12 CFR Part  
337.2)

Unsafe and Unsound Banking Practices: Limits on Extensions of Credit to  
Executive Officers, Directors, and Principal Shareholders and their  
Related Interests (12 CFR Part 337.3)

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